

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**CRIMINAL MINUTES**

**Date:** July 30, 2021

**Time:** 9:31 AM – 10:48 AM  
(1 hour, 17 minutes)

**Judge:** LUCY H. KOH

**Case No.:** 16-cr-00519-  
LHK-1

**Case Name:** UNITED STATES v. Johnny Ray Wolfenbarger (P)(C:N)

**Attorney for Plaintiff:** Marissa Harris and Maia Perez

**Attorney for Defendant:** Severa Keith

**Deputy Clerk:** Kassandra Dibble

**Court Reporter:** Irene Rodriguez

**Interpreter:** None requested

**Probation Officer:** N/A

**PROCEEDINGS**

Status Conference held via Zoom videoconference remotely. All parties, including Defendant Wolfenbarger, appeared via videoconference. Defendant was present and out of custody.

The government represented that its case in chief would take 3-4 days. The Defendant represented that he may not present a defense case, but if he does, the defense case would take only one day. As a result, the trial estimate is now 5 days plus jury deliberations. Trial will be held on August 6, 9, 10, 11, and 12, 2021. Trial will take place from 9:00 a.m. to 4:30 p.m. each day. Each side will have 20 minutes for attorney voir dire for each batch of 50 jurors. 12 jurors and 3 alternates will be selected.

The Court set the following new deadlines:

- By Friday, July 30, 2021:
  - Defendant shall file corrected proposed final jury instructions for Counts 1 and 2.
  - Defendant shall send the government a tentative set of proposed changes to the disputed transcript.
- By Monday, August 2, 2021:
  - Defendant shall file objections to the government's proposed final jury instructions.

- Defendant shall send the government a final set of proposed changes to the disputed transcript.
- By Tuesday, August 3, 2021:
  - The parties shall jointly file—and email to the Courtroom Deputy—a Joint List of Entities, Individuals, and Locations.
  - The parties shall file any stipulations.
- By Wednesday, August 4, 2021: The parties shall jointly file—and email to the Courtroom Deputy—proposed language for jury instructions given during trial.
- By Thursday, August 5, 2021: each party shall email the Courtroom Deputy (1) a list of all people that each party will bring to the courtroom; and (2) each person’s vaccination status. A person may decline to state their vaccination status.
- By Thursday, August 5, 2021: the parties shall jointly file and email to the Courtroom Deputy a Limited Purpose jury instruction to be given to the jury with the government’s proposed prior bad acts instruction.
- By Friday, August 6, 2021: The government shall file objections to Defendant’s corrected proposed final jury instructions.
- By Tuesday, August 10, 2021: After meeting and conferring, the parties shall jointly file proposed final jury instructions. The parties shall use the Ninth Circuit Model Jury Instructions as much as possible. The parties shall identify where they agree and where they disagree. For any disputes, the parties shall provide brief justifications for their positions.

The Court made the following rulings on the record:

- The Court again overruled Defendant’s objection that the child pornography identified on the government’s exhibit list should not be admitted into evidence. *See, e.g.*, Order Denying Defendant’s Motions in Limine, Nos. 12 and 13, ECF No. 358 (July 29, 2021).
- The Court overruled Defendant’s objection that—pursuant to the Court’s Order Denying Government’s Motion in Limine re: Admission of Western Union Spreadsheet, ECF No. 314 (June 4, 2020)—the government could not introduce a summary exhibit containing excerpts of the Western Union spreadsheet. The Court found that the government’s proffer of the trial testimony of the Western Union custodian of record would establish that the Western Union spreadsheet qualifies for the business record hearsay exception and thus render the Western Union spreadsheet admissible.
- The Court ordered that the disputed transcript, to the extent it is not evidence and merely an aid for the jury, shall be limited to the audio/visual evidence published to the jury.

The Wednesday, August 4, 2021 jury selection conference at 2:00 p.m. will be held in-person in Courtroom 8 on the 4<sup>th</sup> Floor of the San Jose Courthouse. Following the jury selection conference, the parties shall have a technology courtroom walkthrough with the Courtroom Deputy.

The Court previously made excludable time findings through the trial date of August 6, 2021. *See* ECF No. 319.